

DIVISION IV

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY VAUGHT, JUDGE

CACR04-1296

June 14, 2006

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT
[CR-01-189-3]

CHARLES PRICHARD
APPELLANT

HON. KIRK DOUGLAS JOHNSON,
CIRCUIT JUDGE

V.

AFFIRMED; MOTION TO
WITHDRAW GRANTED

STATE OF ARKANSAS
APPELLEE

Following a jury trial in Miller County Circuit Court, appellant was convicted of possession of a controlled substance (methamphetamine) and possession with intent to use drug paraphernalia. He was sentenced as a habitual offender to 240 months' incarceration on each count with the sentences to run consecutively. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and the Rules of the Arkansas Supreme Court and Court of Appeals, appellant Charles Prichard's counsel has filed a motion to withdraw as counsel on the ground that the appeal is without merit. This is the second time that this no-merit appeal has been before us. In a previous unpublished opinion, *Prichard v. State*, CACR04-1296 (Jan. 11, 2006), we ordered re-briefing because appellant's counsel did not address several adverse rulings in his brief. Counsel has now filed a substituted brief addressing those rulings, and

we are satisfied that counsel's substituted brief refers to everything in the record that might arguably support an appeal and explains why each adverse ruling in this case is not a meritorious ground for reversal.

After examining the adverse rulings addressed by counsel and appellant's pro se arguments, we hold that an appeal from any of the adverse rulings or the points raised by appellant would be wholly frivolous. Therefore, we affirm the jury's verdict and grant counsel's motion to withdraw.

We agree with appellant's counsel that there are no meritorious issues for appeal. Counsel includes thirteen adverse rulings in his substituted brief, the majority of which involve evidentiary issues. After careful review of counsel's substituted brief, we are satisfied that none of those thirteen adverse rulings would support a meritorious claim for reversal.

When appellant's counsel filed his original brief, the clerk of this court furnished appellant with a copy of the brief and notified him of his right to file pro se points. He filed pro se points of appeal; however, due to this court's order of remand for re-briefing, we did not address those points of appeal at that time. Although appellant filed new pro se points in response to his counsel's submission of a new brief, he only addressed one of the two points he had previously asserted. However, we believe that it is prudent to address all the points of appeal appellant has filed in connection with this case. Accordingly, appellant argues two points for reversal: (1) that his trial counsel was ineffective and (2) that the trial court did not

have jurisdiction to enter an amended judgment and commitment order after appellant had filed his notice of appeal. The State responded by filing a brief arguing that neither of appellant's points were meritorious. We agree.

First, appellant never preserved his ineffective assistance argument for appellate review. Nowhere in the record does appellant object to his counsel's assistance, and ineffective assistance arguments will not be considered for the first time on appeal. *Alexander v. State*, 55 Ark. App. 148, 934 S.W.2d 927 (1996). Next, appellant argues that the trial court had no jurisdiction to amend the judgment and commitment order after appellant filed his notice of appeal. Although the judge made clear during sentencing that appellant's sentences were to run consecutively, the original judgment and commitment order filed on August 12, 2004, stated that appellant was to serve a total time of 240 months. Thereafter, appellant filed his notice of appeal, and two days later, the trial court entered an amended judgment and commitment order reflecting that appellant's total time to be served was forty years. Appellant argues that the trial court could not amend his sentence after he filed for appeal. However, the trial court retained jurisdiction over his case until the trial record was lodged with the appellate court, *Smith v. State*, 354 Ark. 226, 118 S.W.3d 542 (2003), which did not occur until December 2, 2004. Regardless, the trial court would have retained jurisdiction over the matter after the trial record was lodged to correct errors such as this. *McCuen v. State*, 338 Ark. 631, 999 S.W.2d 682 (1999).

Affirmed.

Motion to Withdraw as Counsel granted.

CRABTREE and BAKER, JJ., agree.